

**FEDERAL LAW ON FIREARMS  
AND DOMESTIC VIOLENCE  
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**I. Introduction: You're a criminal defense attorney. Why should you care about domestic relations law? You're a divorce attorney. Why should you care about federal criminal law?**

- A.) You should be prepared to advise your criminal clients about the collateral consequences of domestic relations orders prohibiting acts of abuse, including Orders on Protection from Abuse, *Pendente Lite* orders, standard parenting clauses and final decrees.**
- B.) Federal criminal statutes dealing with possession of firearms by persons involved in domestic violence may impact your clients in domestic relations cases.**
- C.) Whether you represent the person who committed an act of domestic violence or the victim of domestic violence, you should understand the interplay of federal criminal statutes with Alabama domestic relations law.**
- D.) You just might keep your client out of federal prison, or you just might be able to help put your opposing party there.**

**II. Title 28, *United States Code*, § 922**

- A.) General statute defining criminal acts regarding the possession, receipt, transportation, importation of, or dealing in, firearms and ammunition.**
- B.) Extraordinarily complex statute – 8,663 words, hundreds of paragraphs and subparagraphs, definitions and exceptions.**
- C.) Proscribes possession of firearms or ammunition by several classes of persons, including convicted felons, fugitives from justice, addicts, illegal**

aliens, persons who were dishonorably discharged from armed forces, persons under indictment for a felony, etc.

D.) We'll focus on two parts of subsection (g), relating to

(1) persons who have been convicted of committing an act of domestic violence; and

(2) persons who are subject to an order on protection from abuse or any other domestic relations order prohibiting acts of domestic violence.

III. 18 U.S.C. §922 (g) (8): Prohibition against possession of a firearm or ammunition by a person under an order on protection from abuse.

A.) “It shall be unlawful for any person [to possess a firearm or ammunition if he or she . . .] is subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child, except that this paragraph shall only apply to a court order that—

(A) was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate; and

(B)

(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury . . .”

B.) What is an “intimate partner” ?

“The term ‘intimate partner’ means, with respect to a person, the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabitated with the person.”

- C.) **What about *ex parte* PFA orders? They don't count unless the person received actual notice and had an opportunity to participate.**
- D.) **What about generic language in standard parenting clauses, *pendente lite* orders or final decrees?**
- D.) **Plain English version: It is a federal felony offense for a person to possess a firearm or ammunition if he or she is subject to a court order restraining him or her from committing or threatening an act of abuse, if he or she had notice of a hearing and an opportunity to be heard.**

**IV. 18 U.S.C. §922 (g) (9): Prohibition against possession of a firearm or ammunition by a person who has been convicted of misdemeanor domestic violence.**

A.) **“It shall be unlawful for any person [to possess a firearm or ammunition if he or she] . . .has been convicted of a misdemeanor crime of domestic violence.”**

B.) **What is a “misdemeanor crime of domestic violence” ?**

**“The term ‘misdemeanor crime of domestic violence’ means an offense that**

**(i) is a misdemeanor under Federal, State, or Tribal law; and**

**(ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.”**

C.) **Exceptions: Can't count a conviction of a person who was neither represented by counsel nor waived his or her right to counsel. Can't count a conviction which has been expunged or pardoned.**

D.) **Plain English version: It is a federal felony offense for a person to possess a firearm or ammunition if he or she has been convicted of a misdemeanor domestic violence offense.**

V. Penalties for violations of 18 U.S.C. 922 (g).

- A.) Imprisonment for not more than ten years, and/or
- B.) Fine not exceed \$250,000.00.

VI. So what's the takeaway for you?

- A.) If your client has been *charged with* a misdemeanor crime of domestic violence, you should advise him or her that a conviction will mean he or she cannot, ever again, possess or use a firearm or ammunition (unless the conviction is later pardoned, expunged, etc.)
- B.) If your client has been *convicted* of a misdemeanor crime of domestic violence, you should advise him or her to *immediately* get rid of all firearms and ammunition and to refrain from possessing such in the future.
- C.) If your client is subject to an *ex parte* order on protection from abuse, you should advise him or her that entry of a final PFA order, after notice and an opportunity to be heard, will mean that he or she cannot possess or use a firearm so long as that order remains in effect.
- D.) If your client is already subject to a *final* order on protection from abuse, you should advise him or her to *immediately* get rid of all firearms and ammunition and to refrain from possessing such so long as the order is in effect.
- E.) If you client is subject to *any* court order prohibiting him or her from committing or threatening an act of domestic violence, entered after a hearing, notice and opportunity to be heard, you should advise him or her to *immediately* get rid of all firearms and ammunition and to refrain possessing such so long as the order is in effect.
- F.) If you are negotiating a settlement in a domestic relations case, either *pendente lite* or final, or if standard parenting clauses are part of any such order, you should analyze the proposed settlement in light of federal firearms law.
- F.) If you are representing the victim of domestic violence, you should know and understand the potential consequences of the opposing party's acts of violence under federal law.

- G.) If you don't follow my advice, your client might later complain that you didn't do your job. Malpractice suit? Ethics complaint? Either is possible.

**BONUS INFORMATION NOT RELATED TO DOMESTIC VIOLENCE:**

**18 U.S.C. § 922(n) provides as follows: “It shall be unlawful for any person who is under indictment for a crime punishable by imprisonment for a term exceeding one year to ship or transport in interstate or foreign commerce any firearm or ammunition or receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce. “**